IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

Writ Petition No. 42l3 of 2005

Kulbhushan Kushaba Awati. ... Petitioner

vs

State of Mah and ors.. respondents

Dr V.K.Chowdhary for the Petitioner
Mr. Y D Mulani AGP for respondent nos.l to 3
Mr.S.R.Borulkar with Mr. A.B.Vagyani for respondent no. 6

CORAM;A.P.SHAH & D.Y.CHANDRACHUD JJ.
Dated 22.7.2005

P C:

Heard Advocates.

2. The Petitioner is a member of Respondent No. 6 - Ashta People's Cooperative Bank Ltd, which is also a cooperative society registered under the Maharashtra Cooperative Societies Act, l960.The Respondent No.6 Bank is carrying banking business under a licence from the Reserve Bank of India under section22 of the Banking Regulation Act, l949. By this petition, the Petitioner is seeking to challenge the validity of the amended byelaw 3l of the Bank primarily on the ground that the said byelaw is inconsistent with the provisions of section 27(l) of the Maharashtra Cooperative Societies Act, l960, hereinafter referred to as the

said Act. The amended byelaw 3l provides that for contesting the election for the post of Director of the Bank, the person concerned prior to the year ending of the election should be a member of the society for at least 2 years and should have at least l000 shares in his name. The amended byelaw has been approved in the General Body Meeting with requisite majority on l2.2.2003 and has been duly sanctioned by the Additional Commissioner and Special Registrar vide order dated 22.4.2003.

34. Dr Choudhary, learned counsel appearing for the petitioner contends that the byelaws have no statutory force and cannot be equated with the statutory provisions and even if the amended byelaw 3l provides for eligibility for election for director, same would not have been considered in view of the provisions of section l44E of the said Act. He contends that the amended byelaw is totally inconsistent with the provisions of section 27(l) of the said Act and in view of the settled position that in case of conflict the provision of the Act should prevail, the impugned byelaw is liable to struck down as altravires. In any event according to Dr. Choudhary the byelaw is discriminatory inasmuch as it restricts the right

to contest the election only to the members who are holding requisite number of shares thereby causing discrimination among the members who are holding requisite shares and those who are not holding l000 shares as required by the byelaw. In support of his contentions Dr Choudhary relied upon the decision of the Apex Court in Babaji Kondaji Garad vs Nashik Merchants Coop Bank Ltd, AIR l984 SC l92 and the decision of the division bench of this court in J P Badadare vs State of Maharashtra, l985 CTJ 262.

4. Per contra Mr.Borulkar, learned counsel appearing for Respondent Bank contends that the amended byelaw does not confer more than one vote and it merely imposes additional condition for contesting the election to the managing committee. The amended byelaw therefore is in no way inconsistent with section 27(l). Mr. Borulkar contends that the Reserve Bank of India has issued directives to all Primary (Urban) Cooperative Banks recommending extension of capital to risk assets ratio in phased manner. In view of the directives issued by the Reserve Bank of India, the respondent no.6 Bank decided to amend the byelaws for augmentation of the share capital and the amendment

was also sanctioned by the General Body and it was also approved by the Registrar as required by section l3 of the said Act. Accordingly the said byelaw has equal force as the provision of the Act and the Rules under the said Act and the said byelaw has to be considered while examining the eligibility and qualification of a person contesting the election to the managing committee of the society. In support of his contentions Mr Borulkar relied upon the decisions of this court in Jairam vs State of Maharashtra, l996 CTJ 235, Minakshi Murlidhar Ghodke vs The Additional Commer, Nasik Division, Nasik, l997 (l) Mah L J l82 and Pandurang Hindurao Patil vs. State of Maharashtra, l984 CTJ l25.

5. We have considered the rival contentions of the learned counsel for the parties. Section 27 (l) of the said Act which is relevant for our purpose reads as under:

> "27(l) No member of any society shall have more than one vote in its affairs, provided that, in the case of an equality of votes the Chairman shall have a casting vote. Save as otherwise provided in sub-section

(2) to (7) every right to vote shall be exercise personally, and not by proxy. Provided that in the case of an equality of votes the Chairman shall have a casting vote."

6. Section l44E of the said Act reads as follows:

"l44E. Disqualification for membership-(l) A person shall be disqualified for being elected as, and for being a member, of the committee of any specified society-

a) if he is a salaried employee of any society (other than a society of employees themselves) or holds any office of profit under any society except when he holds or is appointed to the office of a Managing Director or any other office declared by the State Government by general or special order not to disqualify its holder or is entitled to be or is elected, appointed or coopted to any reserved seat on the committee of a society under section 73BB.

b) if he has been convicted of an offence

punishable under section l53A or section l7lE or section l7lF or sub-section (2) or sub-section(3) of section 505 of the Indian Penal Code, or under section l44Q or clause (a) of sub-section (20 of section l44R of the Act, unless a period of six years has elapsed since the date of his conviction.

c) if he has been convicted by a Court in India for any offence or sentenced to imprisonment for not less than two years, unless the period of five years has elapsed since his release;

d) if he is found guilty of a corrupt practice by the Commissioner of the Division, unless a period of six years has elapsed since the date on which the decision of the Commissioner takes effect.

e) if he so disqualified by or under any other provision of this Act.

2) For the purposes of clause (a) of sub-section (l), a person is not to be deemed to hold an office of profit under a

society, if he do not receive any remuneration other than compensatory allowance honorarium payable under sub-section (2) of section 65 not exceeding Rupees six thousand per year.

Explanation- In this sub-section "compensatory allowance,and the travelling allowance, the daily allowance or such other allowance which is paid to the holder of the office for the purpose of meeting the personal expenditure in preforming the functions as holder of the office.

3) Notwithstanding anything contained in clause (b) or the sub-section (l) a disqualification under either clause shall not, in case of a person who on the date of the conviction is a member of the specified society, take effect until three months have elapsed from that date or, if within that period an appeal or application or that is brought in respect of the conviction or the sentence under appeal or application is disposed of by the Court".

7. Byelaw 3l which is reproduced by the Petitioner in para 3 of the petition reads as follows:

> "Byelaw No.3l; For having participation in the election for the post of director of the bank, the4 person concerned prior to the year ending of the election should be a member of the said society for at least two years and the person concerned contesting election should have at least l000 shares in his name. However, this condition shall not be applicable for the persons contesting from Backward Class and for the reasons who are holding shares for the economically backward class".

8. In Babaji Kondaji Garad and ors vs Nasik Merchants Coop Bank Ltd Nasik and ors (supra) the Apex Court in para l5 of the report held thus:

> "l5. Section 73B provides a legislative mandate. Rule 6 has a status of subsidiary legislation or delegated legislation. Byelaw of a cooperative society can at best have the status of an Article of Association of a company governed by the Companies Act,

l956 and as held by this court in Cooperative Central Bank Ltd and ors vs Additional Industrial Tribunal, Andhra Pradesh and ors (l970 (l) SCR 205) the byelaws of a cooperative society framed in pursuance of provision of the relevant Act cannot beheld to be law or to have the fore of law. They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the byelaw if not in conformity with the statute in order to give effect to the statutory provision the rule or bye law has to be ignored. The statutory provision has precedence and must be complied with. Further the opinion of the Dy Registrar as expressed in his circular dated l.2.l979 and his letter dated 4.6.l979 has no relevance because his lack of knowledge or misunderstanding of law as expressed in opinion has no relevance. The High Court relying upon the aforementioned

two documents observed as under:

"There is no inconsistency between section 73B and the bye laws because even the Government has construed section 73B in such manner that even though the byelaws are not amended and reserved seats remain unfilled by election the same can be filled up by cooption."

With respect, we find it difficult to subscribe to this untenable approach that a view of law or a legal provision expressed by a government officer can afford reliable basis or even guidelines in the matter of construction of a legislative measure. It is the function of the court to construe legislative measures and in reaching the correct meaning of a statutory provision,opinion of executive branch is hardly relevant. Nor can the court abdicate in favour of such opinion".

9. The learned single Judge of this court (Barde J.) in the case of Jairam vs State of Maharashtra (supra) observed in para l0 as follows:

"l0.While considering the effect of such byelaw which provides further qualifications than the qualification laid down under section 73FF of the Maharashtra Cooperative Societies Act, l960, and Rule 58(l) of the Maharashtra Cooperative Societies Rules, l96l it is observed by the learned single Judge of this court in the case of Sambha s/o Gangaram Pikale vs The State of Maharashtra and ors(supra);

" It cannot be said that no additional qualifications can be prescribed under the rules. It would be within the jurisdiction of the Registrar to examine whether the bye laws including such qualifications are proper and reasonable.Since the present byelaw is approved by the Registrar, it can well be presumed that the Registrar has accepted its necessity"

Thus the import and legality of such byelaw is fully considered in this later judgment with reference to the provisions of section 73FF of the Maharashtra Cooperative

> Societies Act, l960 and Rule 58(l) of the Rules framed thereunder.In such circumstances, the controversy raised in the present matter is set at rest by this judgment delivered by this court in the case of Sambha s/o Gangaram Pikale vs The State of Maharashtra and ors (cited supra)".

l0. In the case of Pandurang Hindurao Patil vs State of Maharashtra(supra) the division bench of this court has held that the byelaws, if any, framed by the cooperative society and which are approved by the Registrar have the equal force as the provisions of the Act and Rules framed thereunder and are required to be taken into consideration while finding out whether a particular member is qualified or not to contest the election. In Minakshi vs Additional Commr (supra) another learned single Judge (R M Lodha J.) considered the amendment to byelaw whereby a member was made ineligible to be elected as a director unless he was a member of the bank for two continuous years and had maintained deposit amount with the bank for one year immediately preceding the year in which elections were to be held. The learned Judge held that the said byelaw is not

contrary to the provisions of section 73FF of the said Act and Rule 58(l) of the Rules framed thereunder. It was held that only additional qualifications are laid down by the society as to who should be eligible to contest the election. In the light of this settled legal position it is not possible to accept the contention of Dr Choudhary that no additional qualifications can be prescribed under the byelaws or rules. It would be within the jurisdiction of the Registrar to examine whether the byelaws including such qualifications are proper or reasonable. Once a byelaw is approved by the Registrar it can well be presumed that the Registrar has accepted its necessity. We also do not find any merit in the contention that the amended byelaw 3l is contrary to section 27(l) of the said Act. What section 27(l) provides is a rule
that no member of the society shall have more than one vote in its affairs and that right to vote shall be exercised personally and not by proxy. The effect of the byelaw is not that a member is conferred more than one vote but merely imposes an additional condition for contesting election to the managing committee. The amended byelaw which provides for holding of additional shares as a

condition of eligibility for contesting the election cannot be said to be inconsistent with section 27(l) of the Act.

ll. Dr Choudhary placed strong reliance on the decision in J P Badadare vs State of Maharashtra (supra) in which the division bench has struck down the proviso to section 27 as arbitrary and violative of Art l4 of the Constitution. The proviso to section 27 provided that where a society is a member of a federal society belonging to any of the categories specified in section 73G then all the members elected to, and the members, if any coopted or appointed under section 73B on the committee of such society shall have a right to vote on its behalf in the affairs of the federal society. The court noted that the members of the managing committee of these member societies differ in strength. Some primary cooperative societies have only 6 members on the managing committee,while other primary coop societies have differing membership ranging upto 2l. This number, therefore varies from primary coop society to society. All these primary coop societies had only one vote under section 27(3) of the said Act before 26.l2.l983 by which proviso was added to section

27. By reason of proviso to sub-section (3) of section 27 each coop society would have as many votes as would be the total number of its members on the managing committee. In other words, within the same class of primary coop societies affiliated to the federal coop society, there was discrimination between the same class and some coop societies, would have more voting rights than the others depending upon the number of members on their managing committees. Therefore there was obvious hostile discrimination between coop societies similarly circumstanced. The ratio in Badadare's case has no application to the facts of this case. The amended byelaw 3l does not make any hostile discrimination between different class of members but merely imposes an additional condition for eligibility whereby the member desirous of participating in the election for the managing committee must hold more than l000 shares.The members belonging to backward class and economically backward class are specifically exempted from this condition. We do not find any arbitrariness or unreasonableness in the byelaw imposing additional condition of holding l000 shares for contesting the election to the managing committee. In the circumstances, the challenge to

the amended byelaw 3l must fail and the petition accordingly stands dismissed.

l2. Mr.Borulkar, learned counsel appearing for the Bank stated that any member who is desirous of contesting the election can buy l000 shares at any time before submission of nomination papers and if such member produces proof that he has requisite number of shares,his nomination papers will be accepted.